IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 1ST DECEMBER 2006 / 10TH AGRAHAYANA 1928

CRP.No. 984 of 2006()

(ORDER DT.6.11.2006 IN EP. 220/2002 IN O.S. NO.18/2000 SUB COURT, ERNAKULAM.)

REVN. PETITIONER: JUDGMENT DEBTOR:

M.I. THYMOOR, S/O. AHAMED ISMAIL,
AGED 38 YEARS, MANATHU VADAKKE PUTHENPURAYIL,
THRIKAKKARA P.O., KOCHI-21.

BY ADV. SRI.G.HARIHARAN

RESPONDENTS: DECREE HOLDER:

M.A. CYRIL, S/O. M.P.ALLESH,
AGED ABOUT 41 YEARS, RESIDING AT MANPURACKAL HOUSE
PALACHUVADU, KAKKANAD WEST P.O., KOCHI-682 030.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 01/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

C.R.P.NO.984 OF 2006

DATED THIS THE 1st DAY OF DECEMBER, 2006

ORDER

Petitioner is the judgment debtor. Respondent is the decree holder. Petitioner is challenging the order of arrest by the executing Court in E.P.220/02. The case of petitioner was that he has no sufficient means to pay the decree debt and inspite of plea of no means executing Court ordered his arrest without deciding that question in the proper perspective and so the order is to be set aside.

2. Learned Counsel appearing for petitioner was heard.

3. Arguments of learned Counsel appearing for Petitioner were that no documentary evidence was adduced by the decree holder and the decision was based on the basis that the bus belonging to petitioner was attached in the suit earlier, but the fact that the bus was released to the brother

of the petitioner, who is not in cordial terms with the petitioner and the brother was made to pay Rs.75,000/- for his failure to produce the bus as directed was not taken into consideration by the executing Court and therefore, the order is to be set aside.

4. On hearing the learned Counsel appearing for petitioner and going through the order, I do not find any illegality in the impugned order. Decree holder was examined. Petitioner did not mount the witness box. Evidently he has not prepared to face cross examination. The executing Court was satisfied with the evidence of PW1 that petitioner has sufficient means to pay the decree debt and he willfully neglected to pay the decree debt. Executing Court found that petitioner is the registered owner of the bus attached earlier and released on executing bond to the brother of petitioner. True, on the failure to produce the bus as directed, brother of petitioner was directed to pay the amount undertaken in the bond. Still petitioner continues to be the

registered owner of the vehicle. On the basis of the unrebutted evidence of PW1 executing Court found that petitioner has had sufficient means to pay the decree debt and he wilfully neglected to pay the same. The order is perfectly legal and regular. I do not find any reason to interfere with the order passed by the executing Court.

Petition dismissed.

M.SASIDHARAN NAMBIAR,JUDGE

Acd